

REQUEST FOR PROPOSAL

(JLARC 05-1)

Consulting Services Contract

**Audit of the Hood Canal Bridge Project
Graving Dock Site**

**Joint Legislative Audit and Review Committee
April 21, 2005**

Table of Contents

SECTION I - INTRODUCTION.....	5
I-1 PURPOSE.....	5
I-2 BACKGROUND.....	5
I-3 PERFORMANCE AUDIT SCOPE AND STUDY OBJECTIVES.....	6
Scope:.....	6
Study Objectives:	6
SECTION II - STATEMENT OF WORK.....	7
II-1 SCOPE OF WORK	7
II-2 SERVICES TO BE PROVIDED	7
II-3 REPORTING AND DELIVERY REQUIREMENTS.....	8
A. <i>Work Plan</i>	8
B. <i>Deliverables</i>	9
C. <i>Working Paper Requirements</i>	9
D. <i>Progress Reporting</i>	10
E. <i>Preliminary and Final Reports to JLARC</i>	10
SECTION III - OFFEROR QUALIFICATIONS	12
III-1 MANDATORY MINIMUM QUALIFICATIONS	12
SECTION IV - GENERAL INFORMATION	14
IV-1 DEFINITIONS.....	14
IV-2 COMPENSATION AND PAYMENT	14
IV-3 EXPECTED TIME PERIOD FOR CONTRACT	15
IV-4 ELIGIBILITY TO COMPETE	15
SECTION V - INSTRUCTIONS FOR COMPLETING AND SUBMITTING PROPOSALS	16
V-1 RFP CONTACT	16
V-2 SCHEDULE OF PROCUREMENT ACTIVITIES	16
V-3 SUBMITTING PROPOSALS	17
V-4 PROPOSAL FORMAT AND CONTENT	18
V-5 PROPRIETARY INFORMATION.....	20
V-6 RECORDS RETENTION	21
V-7 PREPARATION AND TRAVEL COSTS.....	21
V-8 ADDENDA TO THE RFP	21
V-9 SUBMISSION LIMIT	21
SECTION VI - EVALUATION OF PROPOSALS	22
VI-1 EVALUATION PROCEDURE	22
SECTION VII - JLARC RIGHTS	23
VII-1 PROPOSAL REJECTIONS	23
VII-2 CONTRACT AWARD	23
VII-3 PUBLICITY.....	23
VII-4 WAIVERS.....	23

SECTION VIII - MISCELLANEOUS TERMS AND CONDITIONS	24
VIII-1 SUCCESSFUL OFFEROR NOTIFICATION	24
VIII-2 CONFERENCE FOR UNSUCCESSFUL OFFERORS	24
VIII-3 GENERAL CONTRACT TERMS AND CONDITIONS.....	24
EXHIBIT A. CERTIFICATIONS AND ASSURANCES.....	25
EXHIBIT B. LETTER OF INTENT TO BID.....	28
EXHIBIT C. CONTRACT FORM/GENERAL TERMS AND CONDITIONS.....	29

SECTION I - INTRODUCTION

I-1 PURPOSE

This Request for Proposal (RFP) is issued by the Joint Legislative Audit and Review Committee (JLARC), a performance audit and program evaluation committee of the Washington State Legislature. JLARC is a joint committee comprised of 16 members, with equal representation between the Senate and House, and the two major parties. The committee's mission is to make recommendations to the Legislature and state agencies that result in cost savings and/or improved performance in state government.

Washington State's Transportation Performance Audit Board (TPAB) and the Legislative Transportation Committee (LTC) have recently approved and funded a targeted set of performance measure reviews, performance audits, and studies to improve the efficiency and effectiveness of state transportation programs. JLARC is to conduct several of these audits, including this review of the Port Angeles Graving Dock project.

The majority of contractor work will occur between June and December 2005.

JLARC will retain overall responsibility for the organization of the review of the Port Angeles Graving Dock project including development of study findings and formal recommendations, and the presentation of study results.

JLARC is requesting proposals from qualified firms to perform this work within a total contract price of up to **\$246,750**. Proposals will be evaluated in part based on their recognition of total project funding constraints. The contract will be fixed price, and the amount of the contract will cover all expenses of the contractor. Payment under the contract will be based on the successful completion of the tasks, work products, and deliverables specified in this RFP to JLARC's satisfaction.

I-2 BACKGROUND

As part of the Hood Canal Bridge east half replacement project, the Washington State Department of Transportation (WSDOT) required a site to build bridge pontoons. Known as a graving dock, this site was ultimately located at Port Angeles based on expected ability to meet pontoon construction needs and environmental permitting requirements.

Use of the Port Angeles graving dock site was subject to a number of local, state, and federal environmental and development permits, including compliance with the review process of the National Historic Preservation Act. A Cultural Resources Survey prepared for this review concluded that the graving dock site did not contain any historic properties and had a low probability of containing buried archaeological resources, but that a monitoring program should be in place. The State Office of Archaeology and Historic Preservation and the Lower Elwha Klallam Tribe agreed with these conclusions. After submission of relevant information and analyses, all required permits for the graving dock site were granted.

Soon after breaking ground on the site in August 2003, human bone fragments were discovered and construction work was halted. A Memorandum of Agreement to address future archaeological work, burial removals, and continued construction was entered into by the Federal Highway Administration and the Office of Archaeology and Historic Preservation and invited signatories

WSDOT, the Lower Elwha Klallam Tribe, and the U.S. Army Corps of Engineers in March 2004. However, the discovery of a large number of human remains and substantial archaeological resources led to a December 2004 tribal request that WSDOT halt construction and abandon the site. Later that month, WSDOT announced a decision to stop work on the Port Angeles graving dock and pursue alternatives for constructing the Hood Canal Bridge pontoons.

Additional background information is available on this project in the WSDOT's report to TPAB entitled "Introducing the Hood Canal Bridge Rehabilitation Project and the Port Angeles Graving Dock Program." This report is posted on JLARC's web site (<http://jlarc.leg.wa.gov>).

I-3 PERFORMANCE AUDIT SCOPE AND STUDY OBJECTIVES

Scope:

JLARC's audit approach is to review the chain of events, starting with the initial Hood Canal Bridge replacement project, which led to the decision to construct a graving dock at the Port Angeles site and to the abandonment of that construction. The review will address legislative and TPAB member questions concerning the Hood Canal Bridge project and the graving dock. A timeline of events will be developed and an analysis of decision-making will be conducted regarding site selection, archaeological and environmental assessment, and interactions between WSDOT and tribal and governmental agencies. The study will also assess WSDOT procedures on unexpected situations and how they were applied in the decision to stop work at the graving dock site.

Study Objectives:

1. Site Selection: review WSDOT decisions to build a graving dock compared to use of a privately owned or privately developed site and to choose the Port Angeles site relative to other locations. This review will include an evaluation of risk assessments applied to these decisions, including the type and quality of information available for each potential site.
2. Environmental Permitting: examine the role of the permitting process in site strategy and selection, including timing and interaction of environmental and archaeological assessments and the impact, if any, of permit streamlining activities.
3. Archaeological Assessment: evaluate the process used to conclude the Port Angeles site was unlikely to contain historic or archaeological resources, including an examination of the archaeology consultant's work and oversight of that work by WSDOT and the Office of Archaeology and Historical Preservation.
4. Interactions of Interested Parties: review the agreements and consultations between WSDOT and local, state, and federal agencies and tribal representatives concerning the Port Angeles site, including the decision to permanently halt use of the site as a graving dock.
5. Fiscal Review: provide a detailed analysis of expenditures on the Port Angeles site, including acquisition cost, compared to budgeted amounts. Assess the salvage value of WSDOT assets at the site.
6. Recommendations: based on the information obtained from the review, identify lessons learned that can be incorporated into project procedures to minimize risks for future WSDOT projects.

SECTION II - STATEMENT OF WORK

II-1 SCOPE OF WORK

The Firm shall assist JLARC with its audit of the issues leading up to the selection and ultimate abandonment of the Port Angeles graving dock site for the Hood Canal Bridge rehabilitation project. The consultant will be tasked with assessing the strategy and approach for pursuing a state-owned site and selecting a specific location; examining the role of environmental permitting related to site location; evaluating the archaeological assessments of the site before and during construction; and reviewing the interactions, consultations and agreements between WSDOT and various parties leading up to the decision to abandon construction at the site.

II-2 SERVICES TO BE PROVIDED

The Firm shall provide the following services:

1. Review WSDOT's decision to develop a site for construction of a graving dock. Compare this approach to other options, such as utilizing an existing facility or soliciting a contractor to privately develop a facility. Include an evaluation of the criteria, benefits, and risks WSDOT identified at the time to support this decision. As appropriate, consider whether alternative contract approaches exist which were not evaluated by DOT and evaluate the risks and legal authority associated with alternative approaches. Include an evaluation of the emphasis placed on environmental permitting and archaeological risks in determining the construction/contracting approach.
2. Review WSDOT's decision to select the Port Angeles site for the WSDOT owned graving dock. Evaluate the criteria, benefits, and risks DOT identified at the time to support the Port Angeles site decision. As appropriate, consider whether alternative sites existed at the time which were not evaluated by WSDOT and evaluate the risks associated with alternative sites. Include an evaluation of the emphasis placed on environmental permitting and archaeological risks in determining the site.
3. Review environmental permit streamlining. Analyze to what extent, if any, efforts to streamline environmental permitting negatively impacted site selection, construction, and cultural resources survey work.
4. Review the initial archaeological assessment and consultation on the Port Angeles site. Evaluate the process by which an archaeological consultant was selected, how the scope of work was developed for the initial cultural resources survey, and WSDOT oversight of the archaeological consultant. Assess the adequacy of the survey scope for addressing Section 106 requirements under the National Historic Preservation Act. Assess the adequacy of the survey scope for accommodating the construction design proposed at the time. Determine whether the consulting work sufficiently addressed the survey contract scope. Critique the professional competence and completeness of the cultural resources survey work completed by the consultant. Assess the adequacy of the monitoring plan for identifying cultural resources during construction and informing appropriate parties for decision-making. Review the Office of Archaeology and Historic Preservation's role in the initial survey and assess the office's compliance with statutory requirements. Based on information provided to them at the time, critique the professional competence and completeness of recommendations, assistance, and consultation provided by WSDOT cultural resource staff and the Office of Archaeology and Historic Preservation.

5. Review subsequent cultural resources/archaeological consultation under “inadvertent discovery” regulations and construction progress. Evaluate the Section 106 Memorandum of Agreement and Site Treatment Plan for compliance with appropriate laws. Critique the professional competence of archaeological work devoted to developing and carrying out the Site Treatment Plan. Review whether state sponsored archaeological work was performed consistent with the Site Treatment Plan. Assess to what extent WSDOT and the construction contractor used information from archaeological work during construction to monitor progress and risks to construction. Describe the timing of archaeological and human remains findings.
6. Interaction of Interested Parties. Review agreements and consultations between WSDOT, Office of Archaeology and Historic Preservation, the Governor’s Office, legislators, federal officials, local officials, and tribal representatives. Determine if agreements and consultations were appropriate to comply with state and federal laws for protecting cultural resources. Assess how agreements and consultations were employed for informing stakeholders and decision-makers.
7. Assist JLARC with the preparation of a detailed timeline of key events, communication and information sharing, and project decision points.
8. Provide opinions on lessons learned from the review. Lessons learned should be focused on minimizing future risks to the preservation of cultural resources while optimizing cost and schedule efficiency on transportation projects.
9. Prepare a written report to JLARC staff describing the methodology, findings, conclusions, and lessons learned for work under this RFP. Prepare a written summary of potential recommendations in a separate document. It is anticipated that the Firm’s report will become chapters in the final report prepared by JLARC staff and provide the evidentiary basis for final JLARC staff recommendations. (**Note:** JLARC reports are prepared using Microsoft Word, it is therefore requested that the Firm’s report also be prepared in Microsoft Word for formatting and editing compatibility.)
10. The Firm may be required to make up to three oral presentations, in public meetings, to state boards, legislative committees and their staff. As appropriate, the Firm may need to provide follow-up on questions or comments raised at these meetings. The Firm shall be required to follow general guidance provided by JLARC staff as to the format and length of reports and briefings, as well as the level of detail appropriate for intended audiences.

II-3 REPORTING AND DELIVERY REQUIREMENTS

A. Work Plan.

All work shall be in accordance with an approved work plan:

- 1) Within ten (10) calendar days after the award date of the contract, the Firm shall develop a final work plan to meet the work requirements in Sections II-1 and II-2 of this RFP, and any changes necessary based on additional information or input provided by JLARC staff. The work plan shall include:
 - The specific tasks and sub-tasks to be performed;
 - The expected duration and level of effort in hours by person;

- The specific data that will be needed, along with data sources;
- A schedule for performing the tasks;
- The milestone dates; and
- The management, supervisors, staff and affiliates assigned to the tasks and subtasks, and the amount of time each person will spend on each task and subtask.

- 2) The final work plan is subject to approval by the Legislative Auditor. Any subsequent changes shall also require approval by the Legislative Auditor.

B. Deliverables. Major deliverables will be due according to the following schedule.

	Delivery Date	Deliverable
(1)	10 calendar days after contract award	Final work plan
(2)	Bi-weekly on Fridays	Bi-weekly progress report
(3)	November 21, 2005	Preliminary report (Note: JLARC staff will provide written comments on the preliminary report by December 5, 2005.)
(4)	December 12, 2005	Final report (Note: subsequent technical changes may be required upon review by auditees before publication.)

JLARC will review the report to ensure that findings are supported by relevant, sufficient, and credible evidence, and recommendations are logically related to findings. The final report shall incorporate all changes made necessary, as determined by JLARC staff.

C. Working Paper Requirements

- 1) The Firm shall obtain and document in writing sufficient, competent evidential matter to support its findings and recommendations.
- 2) In order to facilitate reviews of working papers by JLARC staff, the Firm shall exercise strict control over the preparation and maintenance of working papers.
- 3) Working papers are to be organized, numbered, and cross-referenced in a logical manner to enable easy traversing between the work plan, working paper sections, conclusions, findings, and source documents.
- 4) The working papers resulting from this study shall be owned by JLARC and shall be retained for a period of at least six years or until any claim brought under this RFP is settled. The Firm may retain a copy of working papers supporting this study.
- 5) The report to JLARC and working papers supporting it are confidential until the preliminary report is officially released to the public by JLARC. Prior to the official release of the report, working paper access shall be limited to JLARC staff and the Firm.

D. Progress Reporting

The Firm shall provide JLARC bi-weekly reports outlining the following:

- A summary of any preliminary findings or issues of significance.
- Risks or issues which might affect the schedule or level of effort as planned, and their required resolution time frames.
- Progress against planned tasks and activities for the particular reporting period.
- The specific accomplishments achieved during the reporting period, including a listing of persons contacted or interviewed and documents reviewed.
- Planned tasks and activities for the next reporting period, including anticipated contacts and research plans.
- Disposition of previously reported risks or issues.
- Proposed revisions to the work plan, specifically noting any suggested changes in schedule or assumptions. (Note: as indicated in Section II-3-A-2), actual revisions to the work plan must be approved by the Legislative Auditor.)
- Interim reports and data providing the results of the analysis, as the analysis is completed.

The progress reports, which may be filed electronically, shall be organized into narrative language that is clear, concise, and structured to be easily understood by a third party.

E. Preliminary and Final Reports to JLARC

The Firm will submit preliminary and final reports to JLARC staff. JLARC staff will review the preliminary report and will also share the preliminary report with the Department of Transportation and the Office of Archaeology and Historic Preservation solely for technical review and comment. The final report will include revisions to the preliminary report as necessary to incorporate comments and suggestions from JLARC staff. The findings, conclusions, and recommendations of the final report will be incorporated as appropriate into the report being prepared by JLARC staff. The preliminary and final reports should synthesize findings, conclusions, and recommendations resulting from a thorough and cumulative assessment of all completed work described in Section II. Findings and conclusions must be clearly documented as resulting from field work and analysis done for this study. Recommendations must be logically related to the findings and conclusions, be limited to substantive matters, and recognize practical and fiscal constraints. Recommendations should also be formatted so that they include a proposed implementation date, a statement of

fiscal impact, and a statement as to whether implementation will require legislative changes.

The Firm may be required to make up to three oral presentations, in public meetings, to state boards, legislative committees and their staff. As appropriate, the Firm may need to provide follow-up on questions or comments raised at these meetings. The Firm shall be required to follow general guidance provided by JLARC staff as to the format and length of reports and briefings, as well as the level of detail appropriate for intended audiences.

SECTION III - OFFEROR QUALIFICATIONS

III-1 MANDATORY MINIMUM QUALIFICATIONS

Offerors, or offerors consisting of consultant teams assembled as a joint venture, must satisfy all of the following mandatory minimum qualifications as outlined below in order to be considered for the contract award:

- A. The offeror must agree to provide the minimum services as detailed in Section II, "Statement of Work," as well as all other requirements stated in the RFP.
- B. The offeror must provide assurance that the key professionals and/or the organization do not have, nor could they potentially have, a material conflict of interest with the state agencies being audited, the Lower Elwha Killalam Tribe, JLARC, or any personal, external, or organizational impairments as described in the *Government Auditing Standards, 2003 Revision* <http://www.gao.gov/> as issued by the United States General Accounting Office.
- C. The offeror must disclose:
 1. All current contracts with:
 - The Washington State Department of Transportation,
 - The Washington State Office of Archaeology and Historic Preservation,
 - Other governmental or private organizations to assist with environmental and development permitting in Washington State, and
 - Tribal organizations or entities affiliated with Native American tribes within Washington State.
 2. All circumstances under which the offeror has been the subject of a Section 106 review by the Washington State Office of Archeology and Historic Preservation, or has assisted another organization to comply with a Section 106 review for a project/development within Washington State.
 3. All circumstances under which the offeror has sought one or more permits from the Washington State Office of Archeology and Historic Preservation.

The offeror must provide an assurance that these arrangements do not impair the firm's or employees' personal, external or organizational independence. The Legislative Auditor reserves the right to request additional information from the offeror to ascertain whether contractual or other relationships impose actual impairments to independence. Failure to provide additional clarifying information may be grounds for disqualification from this procurement.

- D. The offeror must have demonstrated expertise, experience, knowledge, and abilities in the following specific areas:
 - 1) Local, state and federal environmental and development permitting requirements and practices, including the National Historic Preservation Act.
 - 2) Intergovernmental coordination of major transportation projects, including State-Tribal Relations.

- 3) Archeological and cultural resources surveying, (at least one key team member must possess an advanced degree in archaeology, anthropology, or a closely related field).
- 4) Transportation planning, design, permitting, and construction.

SECTION IV - GENERAL INFORMATION

IV-1 DEFINITIONS

“Offeror” or “Firm” means an entity intending to submit or submitting a proposal for the project, including any entity such as a joint venture, assembled specifically for this purpose.

“Apparently Successful Offeror(s)” or “Apparently Successful Firm(s)” means the offeror(s) or firm(s) selected by the Legislative Auditor as the most qualified entity to perform the stated services.

“Legislative Auditor” means the chief executive officer of JLARC.

“JLARC” means the Washington State Joint Legislative Audit and Review Committee.

“LTC” means the Washington State Legislative Transportation Committee.

“RFP” means this Request for Proposal, any *addendum* or *erratum* thereto, offerors' written questions and the respective answers, and any related correspondence that is: (1) addressed to all offerors, and (2) signed by the Legislative Auditor or his/her designee.

“TPAB” means the Washington State Transportation Performance Audit Board.

“WSDOT” and/or “DOT” means the Washington State Department of Transportation.

Contract definitions are provided in Exhibit C.

IV-2 COMPENSATION AND PAYMENT

The compensation for the duration of this contract shall be fixed from the fee included in the offeror's proposal. This fixed compensation shall include all costs, including all travel, as necessary. Invoices shall be submitted to:

Keenan Konopaski, RFP Coordinator
Joint Legislative Audit and Review Committee
506 16th Avenue SE
Olympia, WA 98501-2323

Progress billing may be submitted following completion of the following deliverables:

Deliverable	Percentage of Contract Amount Payable
Final Workplan	5%
Contractor's 1 st Bi-weekly Progress Report for July	10%
Contractor's 1 st Bi-weekly Progress Report for August	10%
Contractor's 1 st Bi-weekly Progress Report for September	10%
Preliminary Report (November 21, 2005)	30%
Final Report (December 12, 2005)	35%

Payment for each billing shall be made by JLARC to the firm(s) after JLARC has determined that the progress of the project and the quality of the work is satisfactory. This determination will

include consideration of the progress of the project in comparison to the work plan, and that the work meets JLARC standards. If JLARC determines that the firm(s) has not made satisfactory progress in accordance with the work plan or the work does not meet JLARC standards, it may withhold payment until the necessary work is completed to its satisfaction.

IV-3 EXPECTED TIME PERIOD FOR CONTRACT

The period of contract performance is expected to be from June 1, 2005, through February 28, 2006.

IV-4 ELIGIBILITY TO COMPETE

Any firm which, either as a parent company, subsidiary, or affiliate, is currently performing consulting services for any state agency or local government that is subject to this performance audit may **not** compete in this procurement without clearly demonstrating how such contracts do not pose impairments to independence. The firm(s), or any subsidiary, affiliate, or parent company thereof, selected as a result of this procurement may **not** during the term of the resulting contract, and any extensions thereto, compete in any procurement for consulting services by any state agency or local government that is subject to this audit.

SECTION V - INSTRUCTIONS FOR COMPLETING AND SUBMITTING PROPOSALS

V-1 RFP CONTACT

The RFP Coordinator listed below is the sole point of contact for this RFP, except as expressly authorized by the Legislative Auditor or his/her designee. Throughout the duration of the procurement process, all communications are to be directed to the contact listed below. Contact with other staff from JLARC, the Washington State Department of Transportation or the Office of Archaeology and Historic Preservation concerning this RFP after issuance of this RFP, except as expressly authorized by the Legislative Auditor, will disqualify the offeror(s).

Keenan Konopaski, RFP Coordinator
Joint Legislative Audit and Review Committee
506 16th Avenue SE
Olympia, WA 98501-2323

Telephone: (360) 786-5187
FAX: (360) 786-5180

E-mail: konopaski.keenan@leg.wa.gov
Web: <http://jlarc.leg.wa.gov>

The RFP Coordinator may require that inquiries be put in writing.

“Letter of Intent to Bid,” in the format of Exhibit B, must be received at JLARC’s office by May 2, 2005, at 4:30 p.m. Pacific Daylight Time. The letter of intent to bid may be submitted electronically via e-mail or fax.

Offerors who submit the “Letter of Intent to Bid” prior to the deadline will be sent any modifications of the RFP and a written record of additional substantive information provided to prospective offerors (such as responses to telephone inquiries). Inquiries concerning clarification of some aspect of the RFP will be accepted beginning April 22, 2005. No inquiries about the RFP will be accepted after April 27, 2005.

Firms who either choose not to submit a “Letter of Intent to Bid” or fail to meet the deadline for its submittal may submit a proposal in response to this RFP, but must do so without the benefit of the information referenced in the preceding paragraph.

V-2 SCHEDULE OF PROCUREMENT ACTIVITIES

The following schedule of activities must be adhered to by all offerors. Offerors mailing proposals should allow normal mail delivery time to ensure timely receipt of their proposals by the RFP Coordinator listed in Section V-1 of this RFP.

Event

Date

RFP Issued	April 21, 2005
RFP clarification inquiries accepted beginning	April 22, 2005
Deadline for RFP clarification inquiries	April 27, 2005
Letters of intent to bid due to JLARC by 4:30 pm	May 2, 2005
E-mail record of answers to questions distributed	May 4, 2005
Proposal due date	May 11, 2005
Finalist oral interviews (may be telephonic)	May 25-27, 2005
Announcement of Apparently Successful Offeror(s)	May 31, 2005
Contract execution	June 1, 2005

V-3 SUBMITTING PROPOSALS

Submittal of six (6) copies of the proposal is required. One copy must have original signatures and five copies can have photocopied signatures. One of the six copies must be **unbound** (one of the copies with photocopied signatures).

The unbound copy must be marked “**Copy for Reproduction,**” and **must** be formatted as follows: (a) no divider sheets or tabs; (b) text only on **one** side of the sheet of paper (*i.e.*, no double-sided pages); and (c) those pages containing “confidential” information **removed**, but a cover index for this copy attached bearing the offeror's name setting forth which page(s) has (have) been removed because they contained “confidential” information.

Six (6) copies of the proposal (including the unbound copy) shall be delivered to the following address by 4:30 p.m., Pacific Daylight Time, May 11, 2005:

Keenan Konopaski, RFP Coordinator
Joint Legislative Audit and Review Committee
506 16th Avenue SE
Olympia, WA 98501-2323

Proposals may not be transmitted using electronic media such as e-mail or facsimile transmission. Notwithstanding the provisions of RCW 1.12.070, postmarks will not be considered as date received for the purposes of this RFP. **Late proposals will not be accepted, nor will time extensions be granted.**

The outside of the proposal packaging is to clearly identify the RFP being responded to.

All proposals and accompanying documentation become the property of the JLARC and **will not be returned.**

V-4 PROPOSAL FORMAT AND CONTENT

Proposals should be prepared on 8½ x 11 inch paper; however, 11 x 14 inch paper is permissible for charts, spreadsheets, etc.

All of the conditions set forth in this section must be included and addressed thoroughly and completely by the offeror before JLARC will accept a response to this RFP.

The proposal should consist of seven (7) main sections as outlined below: 1) Executive Summary, 2) General Information, 3) Technical Proposal, 4) Management Proposal, 5) Experience of the Offeror, 6) Cost Proposal, and 7) "Certifications and Assurances" form (Exhibit A). Section 3 shall not exceed 15 single-spaced pages, and the remaining sections together shall not exceed 18 single-spaced pages. Proposals shall be in sufficient detail to permit evaluation and shall include tabs separating the individual sections (except for the unbound copy). Please keep any attachments to a minimum.

SECTION 1: Executive Summary

Please set forth a stand-alone Executive Summary of the contents of your firm's proposal, including all the subsection topics set forth therein. Take particular care in its preparation, for if your firm is selected as a finalist, this document may be used as a guide in conducting an oral interview. **DO NOT** structure it in the format of a reference to sections of your overall proposal.

SECTION 2: General Information

Please provide the material specified below. If the proposal includes a subcontract or joint venture, the offeror must submit specific information for each subcontractor or joint venture member.

- A. Name, mailing address, phone, e-mail, and FAX number of legal entity with whom the contract is to be written.
- B. Name, mailing address, phone, e-mail, and FAX number of primary contact.
- C. Name, mailing address, e-mail, and phone number(s) of principal officer(s).
- D. Legal status of organization (e.g., sole proprietorship, partnership, corporation, etc.).
- E. Federal employer identification number.
- F. Washington State Department of Revenue Registration Number (UBI number), if applicable.
- G. The location of the facility from which the offeror will operate.
- H. If the offeror or anyone associated with the offeror has been an employee of the state of Washington during the past two years, indicate his/her job title, agency by which employed, and separation date.
- I. If the offeror or anyone associated with the offeror contracted with the state of Washington during the past two years, identify the agency and contract number and briefly describe the contract.

SECTION 3: Technical Proposal

The technical proposal should respond to each of the requested services enumerated in Section II-2 and deliverables enumerated in Section II-3. The technical proposal should describe the approaches, methodologies, and techniques that will be used to provide these services and produce these deliverables. The technical proposal should describe in as much detail as possible

anticipated tasks, levels of effort, schedules, coordination work and meetings with state agencies, local governments, and private firms, data requirements, and other technical aspects of the firm's proposal.

SECTION 4: Management Proposal

Describe how your firm proposes to organize, manage, control, and report on the status of the project. Identify all critical milestones.

Include an organization chart indicating the lines of authority for all personnel involved in performance of the potential contract. Indicate who within the offeror's organization will have final authority for the work.

Identify the staff that will be assigned to the project, including those who will lead the interactions with state implementing and oversight agencies, and those who will conduct the on-site fieldwork. Discuss staff responsibilities and the amount of time they will devote to the project by task or issue area. Succinctly state each person's qualifications and relevant experience. Attach resumes. *[Note: As attachments, staff resumes will not count against the specified page limitations. Care should be taken, however, to keep resumes as concise as possible.]*

Note: The offeror must commit that the staff identified in the proposal will actually be assigned to this project. Any substitution must be approved by JLARC.

SECTION 5: Experience of the Offeror

Indicate the offeror's experience relevant to this project, with particular attention to the staff that would be working on the project. Highlight the offeror's experience related to providing consulting or evaluative services in the following areas:

- environmental and development permitting, including application of the National Historic Preservation Act, in the State of Washington and in other states;
- planning, site selection, design, and permitting of major transportation projects;
- archeological and cultural resources surveying; and
- experience with intergovernmental coordination of major transportation projects, particularly state-tribal relations.

Both the offeror's overall relevant experience and the quality of specific work products will be considered in determining the successful bidder.

List major contracts or other employment history during the last five (5) years that relate to the offeror's ability to perform the services called for under this RFP. Specifically list all work related to the items listed above, indicating the role of the firm on the project and specific staff assignments on the project. Include the contract numbers, period of performance, contact persons and telephone numbers.

Indicate if the offeror within the last five (5) years has had a contract terminated for default, defined as notice to stop performance. Provide full details, including the other party's name, address, and telephone number.

The firm(s) selected will be expected to produce professional quality written reports that meet JLARC standards for quality and that clearly document the basis for findings, conclusions, and

recommendations. Please indicate any relevant experience and, if possible, provide a sample of work that demonstrates the offeror's expertise in this area.

Disclose all current contracts with:

- The Washington State Department of Transportation,
- The Washington State Office of Archaeology and Historic Preservation,
- Other governmental or private organizations to assist with environmental and development permitting in Washington State, and
- Tribal organizations or entities affiliated with Native American tribes within Washington State.

For each contract disclosed, provide an explanation as to how these arrangements do not impair the firm's or employees' personal, external or organizational independence. The Legislative Auditor reserves the right to request additional information from the offeror to ascertain whether contractual or other relationships impose actual impairments to independence. Failure to provide additional clarifying information may be grounds for disqualification from this procurement.

SECTION 6: Cost Proposal

JLARC intends to enter into a fixed-term contract. The services detailed in Section II of this RFP are the basis for the offeror's fee. The fee for work performed shall be a fixed fee for the requested services and all travel.

The fixed-price cost proposal must include a fully detailed budget with staff costs and non-staff costs necessary to accomplish the tasks and to produce the deliverables. The staff must be identified by name, hourly rate, number of hours devoted to the project, and type of work.

SECTION 7: Certifications and Assurances Form

The Certifications and Assurances form, Exhibit A, must be signed by the president or chief executive officer of a corporation, the managing partner of a partnership, the proprietor of a sole proprietorship, or all members of a joint venture included in the offeror's proposal.

V-5 PROPRIETARY INFORMATION

All proposals received shall be public records but shall remain confidential until the Legislative Auditor or his/her designee announces the successful offeror(s) resulting from this RFP, if any. Thereafter, proposals shall be available for public inspection and copying as required by Chapter 42.17 RCW (the principal Washington State statute pertaining to accessibility to public records) except as exempted in that chapter or by other. Offerors are advised that the permissible exemptions from public disclosure pursuant to Chapter 42.17 RCW are very narrow in scope and will be strictly construed. In the event that an offeror desires to claim portions of its proposal as exempt from disclosure under the provisions of the aforementioned RCW, it is incumbent upon that offeror to clearly identify those portions in a proposal transmittal letter. The transmittal letter must identify the page and particular exemption(s) from disclosure upon which it is making its claim. Further, each page claimed to be exempt must be clearly identified by the word "CONFIDENTIAL" printed on the lower right-hand corner of the page. *Designating the entire proposal as confidential is not acceptable and will not be honored.*

If an official request is made to view an offeror's proposal, the Legislative Auditor or his/her designee shall respond in accordance with RCW 42.17.250 *et seq.* If any of the specifically requested information is marked as “confidential” in the proposal, but in the opinion of the Legislative Auditor does not conform to any one of the enumerated exemptions from disclosure, such information will not be made available until three (3) business days after the affected offeror has been given telephonic notice that the information has been requested. If the affected offeror has undertaken proceedings to obtain a court order restraining the Legislative Auditor from disclosure of the “confidential” information requested within those three (3) days, the Legislative Auditor will not disclose such information until resolution of the court proceeding. Upon failure to make application for judicial relief within the allowed period, the information will be disclosed.

NOTE: The proposal of the successful offeror(s) will be attached to the resulting contract and incorporated therein by that attachment. Therefore, as part of a public state agency contract, the *entirety* of the successful offeror(s)' proposal will be subject to public disclosure regardless of any claim of confidentiality or previously applicable statutory exemption. Nevertheless, should a successful offeror obtain a court order from a Washington State court of competent jurisdiction prohibiting disclosure of parts of its proposal prior to the execution of the contract incorporating the same, the Legislative Auditor shall comply with the court order. The burden is upon a successful offeror to evaluate and anticipate its need to maintain confidentiality and to proceed accordingly. Timeliness will be of the essence; a delay in execution of the contract to accommodate a petition to the courts will not be allowed.

V-6 RECORDS RETENTION

After the date of the announcement of the Apparently Successful Offeror(s), the Legislative Auditor will retain one master copy of each proposal received for a period of six (6) years or until any claim brought under this RFP is settled.

V-7 PREPARATION AND TRAVEL COSTS

JLARC will not be liable for any costs associated with preparation and presentation of a proposal submitted in response to this RFP.

The offeror assumes responsibility for its personnel's travel and associated costs as they relate to the bidding on this project. These costs must be considered in the bid cost of the proposal.

V-8 ADDENDA TO THE RFP

In the event it becomes necessary to revise any part of this RFP, an *addendum* or *erratum* will be provided to all offerors who have indicated an intention to submit a proposal.

V-9 SUBMISSION LIMIT

After submission, offerors will not be allowed to amend the proposal. Responses consisting solely of marketing material are not acceptable and will be rejected.

SECTION VI - EVALUATION OF PROPOSALS

VI-1 EVALUATION PROCEDURE

Proposals will be reviewed and evaluated by a panel selected by JLARC staff. Written submittals, subsequently requested materials and oral presentations, if any, will be used in selecting the winning proposal. After initial evaluations, the Legislative Auditor may select a small group of offerors as finalists for oral presentations to the evaluation panel. The Legislative Auditor reserves the right, at his/her sole discretion, to reject any and all proposals received without penalty. Subject to the approval of the JLARC Executive Committee, the final selection, if any, will be that proposal which, in the opinion of the Legislative Auditor after review of all submissions by the evaluation panel, best and sufficiently meets the requirements set forth in the RFP and is in the best interest of the citizens of Washington State.

The selection will be accomplished through the following process:

- A. Initially, the JLARC office will review each proposal for compliance with minimum mandatory requirements as stipulated within the RFP. Proposals found non-compliant will be rejected from further consideration. Proposals not rejected will then be evaluated using the criteria outlined in Section VI-1-B below.
- B. The evaluation panel will evaluate the acceptable proposals and assign numeric scores based on the following weights:

Technical Proposal	40 percent
Management Proposal	15 percent
Offeror's Expertise	35 percent
Cost Proposal	10 percent

JLARC reserves the right to ask for resubmittals of RFPs by finalists, as determined by the Legislative Auditor. Finalists in the RFP process may be asked to make oral presentations either telephonically or in Olympia to the evaluation panel and/or the JLARC regarding their proposal. If finalists are asked to make an oral presentation, the final selection of the successful offeror(s) may be based on a combination of the evaluation of the written RFP and the oral presentation.

SECTION VII - JLARC RIGHTS

VII-1 PROPOSAL REJECTIONS

Determination of clarity and completeness in the responses to any of the provisions in this RFP will be made solely by the Legislative Auditor or his/her designee. The Legislative Auditor reserves the right to require clarification, additional information, and materials in any form relative to any or all of the provisions or conditions of this RFP.

The Legislative Auditor reserves the right to reject any or all proposals at any time prior to the execution of a contract acceptable to the Legislative Auditor, without any penalty to the Legislative Auditor.

VII-2 CONTRACT AWARD

The Legislative Auditor intends to award the contract to the offeror(s) with the best combination of attributes based on the evaluation criteria listed in Section VI-1-B of this RFP.

Should the Legislative Auditor fail to negotiate a contract with the Apparently Successful Offeror(s), the Legislative Auditor reserves the right to negotiate and contract with the next most qualified offeror(s).

VII-3 PUBLICITY

No informational pamphlets, notices, press releases, findings, conclusions, research reports, and/or similar public notices concerning this project may be released by the Apparently Successful Offeror(s) without obtaining prior written approval from the Legislative Auditor.

VII-4 WAIVERS

The Legislative Auditor reserves the right to waive specific terms and conditions contained in this RFP.

It shall be understood by offerors that the proposal is predicated upon acceptance of all terms and conditions contained in this RFP unless the offeror has obtained such a waiver, in writing, from the Legislative Auditor or his/her designee prior to submission of the proposal.

Any waiver granted, prior to formal negotiation with the Apparently Successful Offeror, will be granted to all offerors.

SECTION VIII - MISCELLANEOUS TERMS AND CONDITIONS

VIII-1 SUCCESSFUL OFFEROR NOTIFICATION

On or about the date specified in Section V-2, “Schedule of Procurement Activities,” of this RFP, a letter indicating whether the offeror was selected as “the Apparently Successful Offeror” will be mailed to each offeror who submitted a proposal in accordance with the procedures specified in this RFP.

VIII-2 CONFERENCE FOR UNSUCCESSFUL OFFERORS

An unsuccessful offeror may request a debriefing conference by notifying the RFP coordinator in writing within seven (7) days after the date of the notification letter. The Legislative Auditor will review materials relating to the debriefing conference and respond to the unsuccessful offeror.

VIII-3 GENERAL CONTRACT TERMS AND CONDITIONS

Exhibit C of this RFP contains the contract form, including general terms and conditions that the JLARC office will use in the final negotiated contract with the successful offeror(s).

NOTE: SPECIFIC PROVISIONS OF THIS CONTRACT ARE SUBJECT TO NEGOTIATION BETWEEN JLARC AND THE SUCCESSFUL OFFEROR(S).

EXHIBIT A. CERTIFICATIONS AND ASSURANCES

The Offeror makes the following certifications and assurances as a required element of the proposal to which it is included, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award and continuation of the contract resulting from this RFP. Any exceptions to these certifications and assurances must be described in full detail on a separate page(s) and attached to this document. The Legislative Auditor reserves the right to determine if such exception is substantive and a basis for disqualification.

1. INDEPENDENT PREPARATION AND COST DETERMINATION

- Prices and/or cost data have been arrived at independently, without consultation, communications, or agreement with any other offeror or with any competitor for the purpose of restricting competition.
- Unless otherwise required by law, the prices and/or cost data submitted have not knowingly been disclosed by the offeror and will not knowingly be disclosed by the offeror, prior to award, directly or indirectly to any other offeror or to any competitor.
- No attempt has been made or will be made by the offeror to induce any other person or firm(s) to submit or not submit a proposal for the purpose of restricting competition.
- In preparing this proposal, assistance has not been provided by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this proposal. Any exceptions to these assurances are described in full detail on a separate page and attached to this document.

NOTE: In order to ensure fair and equal competition between all offerors, the development of proposals with the assistance of organizations or individuals outside the offeror's organization must be declared in the proposal and the name(s) of such organizations or individuals provided. Failure to acknowledge such assistance and to identify those providing it may result in the disqualification of the proposal. No contingent fees for such assistance will be allowed to be paid under any contract or grant resulting from this RFP. HOWEVER, the offeror may freely join with other persons or organizations for the purpose of presenting a single proposal.

2. PRICE WARRANTY

The costs quoted for services in response to this RFP do not exceed those typically charged any other client for the same services.

3. NO CONFLICT OF INTEREST

The offeror certifies that no condition exists with respect to the offeror, or any of its employees, regarding any current or past relationship with the Joint Legislative Audit and Review Committee, or higher education institutions or agencies that violates Chapter 42.52 RCW, the “Ethics in Public Service” Law.

4. PROPOSAL EVALUATION PERIOD

The attached proposal is a firm offer for a period of 120 days following receipt by the JLARC office and may be accepted by the Legislative Auditor without further negotiation at any time within the 120-day period.

5. CONTACTING REFERENCES

JLARC is hereby granted permission to contact any references or past contracting clients listed in response to this RFP.

6. PREPARATION COSTS

The offeror understands that JLARC will not provide reimbursement for any costs incurred in the preparation of this proposal. It is further understood that JLARC reserves the right to reject all proposals and make no contract award.

7. STANDARDS OF AUDIT INDEPENDENCE

The offeror provides assurance that the key professionals and/or the organization do not have, nor could they potentially have, a material conflict of interest with the state agencies being audited, the Lower Elwha Klallam Tribe, JLARC, or any personal, external, or organizational impairments as described in the *Government Auditing Standards, 2003 Revision* <http://www.gao.gov/> as issued by the United States General Accounting Office.

The person signing below warrants that all of the foregoing certifications and assurances are true to the best of their knowledge after reasonable efforts to obtain the truth.

Firm Name (typed)

Legal Name (typed)

Address (typed)

Chief Executive Officer, Name (typed)

Chief Executive Officer, Signature

Chief Executive Officer, Title (typed)

Date

EXHIBIT B. LETTER OF INTENT TO BID

On behalf of my firm, I hereby certify that we intend to submit a proposal to provide consulting services to the Joint Legislative Audit and Review Committee for the Audit of the Hood Canal Bridge Project Graving Dock Site. I have read the Request for Proposal for the procurement of these services and accept the conditions set forth therein.

Firm Name (typed)

Legal Name (typed)

Address (typed)

Chief Executive Officer, Name and Title (typed)

Chief Executive Officer, Signature

Date

This letter of Intent to Bid must be received by the Joint Legislative Audit and Review Committee by 4:30 p.m., May 2, 2005, Pacific Daylight Time. It may be mailed or faxed or submitted electronically via e-mail to:

Keenan Konopaski, RFP Coordinator
Joint Legislative Audit and Review Committee
506 16th Avenue SE
Olympia, WA 98501-2323
FAX: (360) 786-5180
konopaski.keenan@leg.wa.gov

PLEASE NOTE: If you submit this form and later decide not to submit a proposal, please notify Keenan Konopaski by telephone at (360) 786-5187. Thank you.

EXHIBIT C. CONTRACT FORM/GENERAL TERMS AND CONDITIONS**PERSONAL SERVICE CONTRACT
AUDIT OF THE HOOD CANAL BRIDGE PROJECT GRAVING DOCK SITE****STATE OF WASHINGTON****CONTRACT NO. _____**

**Joint Legislative Audit and Review Committee
506 16th Avenue SE
Olympia WA 98501-2323
(360) 786-5171**

1. THIS CONTRACT is made by and between the Joint Legislative Audit and Review Committee and the firm of _____, hereinafter referred to as the "Contractor."

2. CONTRACTOR: _____

ADDRESS: _____

Federal Employer Identification No.: _____

Washington Uniform Business Identification No.: _____

3. SCOPE OF ENGAGEMENT

The Contractor will provide all services generally described in Section II - Statement of Work of the attached Request for Proposal, hereinafter referred to as the "RFP," as described in the Contractor's proposal, hereinafter referred to as the "Proposal," and as described in detail in the work plan attached hereto as Exhibit _ and made a part of this contract, hereinafter referred to as the "Work Plan."

The Contractor shall produce all written reports described in the RFP, Proposal, and Work Plan. All written work of the Contractor will be expected to be of a professional quality acceptable to the Joint Legislative Audit and Review Committee. In written reports, the Contractor's findings and conclusions must be clearly documented as resulting from fieldwork and data analysis done for this audit. Recommendations must be logically related to the findings and conclusions and must recognize practical and fiscal constraints.

4. It is agreed that Contractor's management staff performing work under this contract are as listed below:

It is understood that staff named above will be responsible throughout the period of this contract. Any changes in management personnel assigned to this engagement require JLARC approval.

5. Contractor warrants that staff performing work under this contract are free from personal and external impairments to independence.

6. Contractor warrants that staff performing work under this contract possess adequate professional proficiency for the tasks required.
7. If irregularities, fraud, or other significant audit issues which may impact the audit are suspected, the Contractor must immediately notify Keenan Konopaski, RFP Coordinator, at (360) 786-5187.
8. All instances of noncompliance with state and local laws will be disclosed to Keenan Konopaski, RFP Coordinator, (360) 786-5187.
9. The Joint Legislative Audit and Review Committee's contract coordinator is Keenan Konopaski, RFP Coordinator, (360) 786-5187.

Contractor's contract coordinator is _____. (*Name and Telephone*)

10. It is understood the Joint Legislative Audit and Review Committee's office is the principle auditing entity. Portions of the Contractor's work will be incorporated into the report that will be prepared by JLARC staff. The Contractor's report to JLARC may be incorporated as a Technical Appendix to the JLARC staff report.
11. EFFECTIVE DATE AND DURATION OF CONTRACT

Subject to other contract provisions, the period of performance under this contract will be from date of signing through February 28, 2006, unless sooner terminated as provided herein.

12. All rights and obligations of the parties to this contract shall be subject to and governed by those Special Terms and Conditions contained in the text of this contract and the attached General Terms and Conditions, all hereby incorporated as part of this contract.

In the event of an inconsistency in this agreement, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

- (a) Applicable federal and state statutes and regulations;
- (b) The terms and conditions of this contract;
- (c) Request for Proposal No 05-1;
- (d) The Contractor's Proposal dated _____ to the Joint Legislative Audit and Review Committee's RFP, including all written information provided with the Contractor's Proposal;
- (e) The Contractor's final approved Work Plan;
- (f) Any other provisions of the contract whether incorporated by reference or otherwise.

13. COMPENSATION AND PAYMENT

The Contractor agrees that the maximum amount to be paid to the Contractor under this contract shall not exceed \$_____ in total, and shall include full payment for all work specified in the scope of engagement outlined in item 3. The Contractor agrees that the Joint Legislative Audit and Review Committee is not responsible for providing transportation to and from the audit site and that any travel costs, insurance costs, or other out-of-pocket costs are the responsibility of the Contractor. Any additional services provided by the Contractor and/or Subcontractors would require a written contract amendment approved and processed through the Joint Legislative Audit and Review Committee's office prior to beginning the additional services.

The Contractor may submit invoices for progress billings in accordance with the schedule included in Section IV-2 of the RFP. Payment for each billing will be made upon JLARC's satisfaction with the overall progress of the Contractor and the quality of each deliverable. Each invoice will clearly indicate that it is for services rendered in performance under Contract No. **X**

All invoices must be submitted for payment to Keenan Konopaski, RFP Coordinator, 506 16th Avenue SE, Olympia, WA 98501-2323. Payment shall be considered timely if made by the Joint Legislative Audit and Review Committee within 30 days. If JLARC determines that the Contractor has not made satisfactory progress in accordance with the work plan, it may withhold payment until the necessary work is completed to JLARC's satisfaction. The Joint Legislative Audit and Review Committee may, in its sole discretion, withhold payments owed the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of the contract.

14. The Joint Legislative Audit and Review Committee shall have the authority to monitor the performance of the Contractor, approve actions by the Contractor, and accept or reject any deliverable provided by the Contractor.
15. If any provision of this contract shall be deemed in conflict with any statute or rule of law, such provision shall be deemed modified to be in conformance with said statute or rule of law.
16. This contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.
17. This contract shall be subject to the written approval of the Legislative Auditor and shall not be binding until so approved. Only the Legislative Auditor shall have the express, implied, or apparent authority to alter, amend, or waive any clause or condition of this contract.

IN WITNESS WHEREOF: The Joint Legislative Audit and Review Committee and the Contractor have signed this contract.

STATE OF WASHINGTON
JOINT LEGISLATIVE AUDIT AND
REVIEW COMMITTEE

CONTRACTOR

Signature

Signature

Title Date

Title Date

APPROVED AS TO FORM:

By: _____
Assistant Attorney General Date

GENERAL TERMS AND CONDITIONS

DEFINITIONS -- As used throughout this contract, the following terms shall have the meaning set forth below:

- A. The "Joint Legislative Audit and Review Committee," or "JLARC," shall mean the Washington State Joint Legislative Audit and Review Committee, any division, section, office, unit, or other entity of JLARC or any of the officers or other officials lawfully representing the JLARC.
- B. "Legislative Auditor" shall mean the Legislative Auditor of JLARC, and/or the delegate authorized in writing to act on his/her behalf.
- C. "Contractor" shall mean that firm, provider, organization, individual, or other entity performing services under this contract, and shall include all employees of the Contractor.
- D. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" means Subcontractor(s) in any tier.

CONTRACTOR NOT EMPLOYEE OF THE AGENCY -- The Contractor and his or her employees or agents performing under this contract are not employees or agents of JLARC. The Contractor will not hold himself/herself out as or claim to be an officer or employee of JLARC or of the state of Washington by reason hereof, nor will the Contractor make any claim or right, privilege or benefit which would accrue to an employee under Chapter 41.06. RCW or Chapter 28B.16 RCW.

NONDISCRIMINATION -- During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations, and policies.

NONCOMPLIANCE WITH NONDISCRIMINATION LAWS -- In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this contract may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with JLARC. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

SUBCONTRACTING -- Neither the Contractor nor any Subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the Legislative Auditor.

INDEMNIFICATION --The Contractor shall defend, protect, and hold harmless the state of Washington, JLARC, or any employees thereof, from and against all claims, suits or actions arising from the Contractor's acts which are libelous or slanderous, which result in injury to persons or property, which violate a right of confidentiality, or which constitute an infringement of any copyright, patent, trademark, or trade name through use of reproduction of material of any kind.

COVENANT AGAINST CONTINGENT FEES -- The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agent maintained by the Contractor for the purpose of securing business. JLARC shall have the right, in the event of breach of this clause by the Contractor, to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

CONFLICT OF INTEREST -- JLARC may, by written notice to the Contractor, terminate this contract if

it is found after due notice and examination by the Legislative Auditor that there is a violation of the *State Ethics Law Chapter 42.52 RCW*; or any similar statute involving the Contractor in the procurement of, or performance under, this contract.

In the event this contract is terminated as provided above, JLARC shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of JLARC provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Legislative Auditor makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

TREATMENT OF ASSETS --

- A. Title to all property furnished by JLARC shall remain in JLARC's office. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in JLARC upon delivery of such property by the vendor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in JLARC upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by JLARC in whole or in part, whichever first occurs.
- B. Any property of JLARC furnished to the Contractor shall, unless otherwise provided herein or approved by the Legislative Auditor, be used only for the performance of this contract.
- C. The Contractor shall be responsible for any loss or damage to property of JLARC which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.
- D. Upon loss or destruction of, or damage to, any auditees' or JLARC's property, the Contractor shall notify JLARC thereof and shall take all reasonable steps to protect that property from further damage.
- E. The Contractor shall surrender to JLARC all property of JLARC prior to settlement upon completion, termination, or cancellation of this contract.
- F. All reference to the Contractor under this clause shall also include Contractor's employees, agents, or Subcontractors.

NONASSIGNABILITY -- Neither this contract, nor any claim arising under this contract, shall be transferred or assigned by the Contractor.

RECORDS, DOCUMENTS AND REPORTS -- The Contractor shall maintain books, records, documents, and other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Legislative Auditor, State Auditor and federal officials so authorized by law, rule, regulation, or contract. The Contractor will retain all books, records, documents, and other materials relevant to this contract for six (6) years after settlement, and make them available for inspection by persons authorized under this provision.

RIGHT OF INSPECTION -- The Contractor shall provide right of access to its facilities to the JLARC, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

SAFEGUARDING OF INFORMATION -- The use or disclosure by any party of any information concerning JLARC for any purpose not directly connected with the administration of JLARC or the Contractor's responsibilities with respect to services provided under this contract is prohibited except by written consent of the Legislative Auditor.

During the audit process the auditee will be given the opportunity to review and discuss the audit report for possible clarification before final release. Confidentiality will be maintained throughout the audit process.

RIGHTS IN DATA -- Unless otherwise provided, data which originates from this contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by JLARC. Data shall include, but not be limited to: working papers, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

Data which is delivered under the contract, but which does not originate therefrom shall be transferred to JLARC with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, dispose of, and to authorize others to do so; *provided*, that such license shall be limited to the extent which the Contractor has a right to grant such a license. The Contractor shall exert all reasonable effort to advise JLARC, at the time of delivery of data furnished under this contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this contract. JLARC shall receive prompt written notice of each notice of claim of copyright infringement received by the Contractor with respect to any data delivered under this contract. JLARC shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

REGISTRATION WITH DEPARTMENT OF REVENUE -- The Contractor shall complete registration with the Department of Revenue, General Administration Building, Olympia, WA 98504, and be responsible for payment of all taxes due on payments made under this contract.

LICENSING, ACCREDITATION AND REGISTRATION -- The Contractor shall comply with all applicable local, state and federal licensing, accreditation, and registration requirements/standards, necessary for the performance of this contract.

INDUSTRIAL INSURANCE COVERAGE -- The Contractor shall provide or purchase industrial insurance coverage prior to performing work under this contract. JLARC will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this Contractor, or any Subcontractor or employee of the Contractor, which might arise under the industrial insurance laws during performance of duties and services under this contract.

ADVANCE PAYMENTS PROHIBITED -- No payment in advance or in anticipation of services or supplies to be provided under this contract shall be made by JLARC.

SAVINGS -- In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, JLARC may terminate the contract under the "Termination for Convenience" clause, without the five-day notice requirement, subject to renegotiation under those new funding limitations and conditions.

LIMITATION OF AUTHORITY -- Only the Legislative Auditor shall have the express, implied, or apparent authority to alter, amend, modify or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Legislative Auditor.

WAIVER OF DEFAULT -- Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the contract unless stated to be such in writing, signed by the Legislative Auditor and attached to the original contract.

CHANGES AND MODIFICATIONS -- The Legislative Auditor may, at any time, by written notification to the Contractor and without notice to any known guarantor or surety, make changes in the general scope of the services to be performed under the contract. If any such changes cause an increase or decrease in the cost of, or the time required for the performance of this contract, an equitable adjustment may be made in the contract price or period of performance, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of Contractor's receipt of the notice of such change; *provided*, however, that the Legislative Auditor may, upon determining that the facts justify such action, receive and act upon such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

DISPUTES -- If a dispute should arise between the Contractor and JLARC regarding the performance or expected outcomes of the contract, such dispute shall be referred to the Legislative Auditor for review and decision. If the decision by the Legislative Auditor is not satisfactory to the Contractor, the Contractor may request in writing that the dispute be reviewed by the executive committee of JLARC. Such written request shall be provided to the Legislative Auditor within five (5) days following the Legislative Auditor's decision. The Legislative Auditor shall present the written request to the executive committee at its earliest convenience for review and decision. The decision of the executive committee shall become final and binding.

Unless mutually agreed to by the Legislative Auditor and the Contractor, the work to be performed under this agreement shall not be delayed or stopped during the review of a dispute either by the Legislative Auditor or the JLARC Executive Committee.

TERMINATION FOR DEFAULT -- By written notice, JLARC may terminate the contract, in whole or in part, for failure of the Contractor to perform any of the provisions hereof. In such event the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the mailing, advertising, and staff time; *provided*, that if (i) it is determined for any reason the Contractor was not in default, or (ii) the Contractor's failure to perform is without Contractor's and/or Subcontractor's control, fault or negligence, the termination shall be deemed to be a Termination for Convenience.

TERMINATION FOR CONVENIENCE -- Except as otherwise provided in this contract, the Legislative Auditor may, by five (5) days written notice, beginning on the second day after the mailing, terminate this contract in whole or in part when it is in the best interests of JLARC. If this contract is so terminated, JLARC shall be liable only for payment in accordance with the terms of this contract for services rendered prior to the effective date of termination.

TERMINATION PROCEDURE -- Upon termination of this contract JLARC, in addition to any other rights provided in this contract, may require the Contractor to deliver to JLARC any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

JLARC shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by JLARC, and the amount agreed upon by the Contractor and JLARC for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services which are accepted by JLARC, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Legislative Auditor shall determine the extent of the liability of JLARC. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. JLARC may withhold from any amounts due the Contractor such sum as the Legislative Auditor determines to be necessary to protect JLARC against potential loss or liability.

The rights and remedies of JLARC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a notice of termination, and except as otherwise directed by the Legislative Auditor, the Contractor shall:

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated;
3. Assign to JLARC, in the manner, at the times, and to the extent directed by the Legislative Auditor, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case JLARC has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Legislative Auditor to the extent the Legislative Auditor may require, which approval or ratification shall be final for all the purposes of this clause;
5. Transfer title to JLARC and deliver in the manner, at the times, and to the extent directed by the Legislative Auditor any property which, if the contract has been completed, would have been required to be furnished to JLARC;
6. Complete performance of such part of the work as shall not have been terminated by the Legislative Auditor; and
7. Take such action as may be necessary, or as the Legislative Auditor may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which JLARC has or may acquire an interest.

GOVERNING LAW -- This contract shall be governed by the laws of the state of Washington. In the event of a lawsuit involving this contract, venue shall be proper only in Thurston County. The

Contractor, by execution of this contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter.

SEVERABILITY -- If any provision of this contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this contract which can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

FORCE MAJEURE -- Neither party shall be liable to the other or deemed in default under this contract for any delay or failure to perform its obligations under this contract if such delay or failure arises from any cause or causes beyond the reasonable control of the parties and without fault or negligence of the parties, including and not limited to acts of God, war, riots, strikes, fire, floods, earthquakes, epidemics, or other similar circumstances.

SCOPE OF CONTRACT -- This contract and the attachments incorporate all the contracts, covenants, and understandings between the parties concerning the subject matter, and all such covenants, agreements, and understandings have been merged into this contract. No prior contract or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this contract.

CHANGE OF CONTROL OR PERSONNEL -- Contractor shall promptly and in any case within twenty-four (24) hours notify the Legislative Auditor in writing:

1. If any of the representations and warranties of the Contractor set forth in this contract shall cease to be true at any time during the term of this contract;
2. Of any material change in the Contractor's management staff;
3. Of any change in control of the Contractor or in the business structure of the Contractor;
4. Of any other material change in the Contractor's business, partnership, or corporate organization relating to this engagement. All written notices regarding changes in management staff shall contain the same information about newly assigned management staff as was requested by JLARC in the RFP and such additional information as may be requested by the JLARC office. For purposes hereof, the term "management staff" shall mean those persons identified as senior management in any response to a RFP or who otherwise will exercise a major administrative role or major policy or consultant role to the provision of the Contractor's services hereunder. All written notices regarding changes in control of the Contractor shall contain the same information about any new controlling entity as was requested by JLARC in the RFP regarding the Contractor and such additional information as may be requested by JLARC.

Approval of these changes rests solely with JLARC and will not be unreasonably withheld.

PAYMENT OF TAXES -- Contractor shall pay all applicable taxes assessed on the compensation received under this contract and shall identify and pay those taxes under Contractor's federal and state identification number(s).